Acquisition Reform Focus Group
Performance Based Service Contracting Training Issues
FINAL REPORT
April 22-23, 1997

Issues Organized Into Categories

I. Requirements Definition

Group Determined Elements for Requirements Definition:

1. Project Objectives
2. Project Constraints
3. Project Requirements
4. Training Barriers

1. Project Objectives

A. Determine the type of environmental work needed:

- Environmental study,design, remedial action, operation & maintenance

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- Compliance
- Pollution prevention
- Transportation & storage
- Performance Specification as opposed to Design Specification for the SOW

B. Determine desired outcome:

- Warranty requirements

- Compliance with clean up standard
- Government project manager, regulator and stake holder acceptance of outcome
- Productive reuse of property after cleanup
- Removal of liability to Government for cleanup
- Performance Specification as opposed to Design Specification for the SOW

C. Define project baseline:

- Validated cost/scope and Schedule.

D. Determine partnering requirements:

- Develop common understanding of desired objectives
- Develop roles and responsibilities
- Develop shared goals and risks
- Identifying stakeholders
- Partnering needs to be voluntary to work.

E. Define safety requirements:

- Use of Performance requirements rather detailed specifications.

F. Clearly define measurable objectives:

- Tie payment schedule to desired objectives
- Tie objectives to desired outcome of site vs administrative objectives
- Performance
- Cost control

- Schedule
- Meeting desired cleanup levels.
- Quality

G. Define liability issues

H. Ensure project flexibility:

- Adaptability to changing conditions
- Don't include overly restrictive specs or requirements
- Encourage innovation
- Encourage technology transfer
- Sufficient Technical Direction to Contractor to meet contract requirements within defined areas.

I. Incentive cost savings:

- Motivate contractor to highest level of efficiency (contractor shared savings)
- Include incentives and disincentives
- Community economic development considerations
- Why is this under Requirements Development?

J. Technology considerations:

- Encourage the selection of cost effective;safe cleanups
- Consider ultimate reuse of site/facilities
- Data Rights with use of innovative technologies.

2. Project Constraints

A. Funding

B. Schedule

C. Milestones

D. Environmental regulations

E. Technology risks

F. Political

G. Acquisition regulations:

- Statutory
- Executive orders
- FAR/DFARS/Agency
- Socioeconomic considerations

3. Project Requirements

A. Safety

B. Warranty

C. Technology risks

D. Quality assurance:

- Contractor QA/QC
- Government oversight

E. Acceptance of services

F. Level of detail

- Separating the necessary from the unnecessary

G. Documentation

H. Subcontractor oversight

I. Offsite disposal

J. Liability issues

K. Permitting

L. Required meetings

4. Training Barriers

A. Lack of estimating procedures, methods, tools, etc.

B. Tailor training to relevant PBSC experience

- Just tell them what they need to know

C. Resistance to change

D. Conflicting directives and mandates

- Competing organizational interests
- Program execution mindset

E. Funding availability

II. Quantifiable Performance Standards

Group Determined Elements for Quantifiable Performance Standards

A. Types of Quantifiable Performance Standards
B. Measurement Issues for Environmental Restoration
C. Political and Regulatory Considerations
D. Customer Preference
E. Focus On Outcomes As Compared To Outputs/Process Measures
F. Measurement Yardsticks For Environmental Restoration

A. Types of Quantifiable Performance Standards

- Cost
- Schedule
- Quantity
- Quality/Effectiveness
- Impact of Innovation on other quantifiable perf. measures
- Responsiveness
- Experience modification rate/safety record
- Site cleanup objectives/closure
- Stake-holder acceptance

B. Measurement Issues for Environmental Restoration

- Impact of unknown and unpredictable variables on development of ER standards/performance measures.
  Do you mean the contractor's ability to react to impact of unknown and unpredictable requirements?

- Obtaining regulatory approval for proposed course of action.

  How do you measure this?

- Variability/Conflicts between Federal, State and Local ordinances/requirements

- Should be a Government function and not a contractor responsibility!!!!!!!! How should this be done?? We don't know.

- Build flexibility into performance measure (range of acceptable variation in critical variable) before need for adjustment in performance measure.

- Quality of site assessment/characterization.

- Limits of Technology

- Availability of Disposal Sites/Options

- Transportation restrictions

- Conflict of Interest between ER Design versus ER Implementation

- Limitation on number of qualified contractors.

- Responsiveness

- Environmental Health and Safety (number of releases, number of injuries/deaths, adding to contamination, worker exposures).

- Are cost and schedule objectives being met?

C. Political and Regulatory Considerations

- Equitable distribution of cleanup dollars among sites.
- Brownfields versus Greenfields (Reuse)
- Acceptability of treatment options for use at various sites.
- Customer preferences
  Need to expand on this.
- Impact of Congressional Interest
- Conflicting regulatory requirements and impact on treatment implementation
- Environmental Justice (quality, equitable attention, and timeliness of cleanup)
  LOSER PAYS STANDARD OF ACCOUNTABILITY
- Stake holder participation and acceptance
- Stringent clean up standards - how clean is clean?
- For BRAC--local economic conditions

D. Customer Preference

- Customer Preference drives selection of cognizant Govt. agencies.
- Level of cleanup driven by customers.
- Identification of Customers and Customer Motivations
- Customer preference for treatment options.
- Customer preference for small and local contracting/employment.

- Community preference for remote disposal of wastes in other states.
- Socio-economic preferences

E. Focus On Outcomes As Compared To Outputs/Process Measures

- Re-education of Government Program/Contracting Personnel
- Focus on End Results rather than Intermediate Results
- Encourage Innovative Technologies
- Focus on Long Term Outcomes.
- Incentive Structure need to reward contractors for Long Term achievement.
- Use of Completion Form of Contracts.
- Modify oversight approach/requirements
  DOES THIS MEAN MORE OR LESS STRINGENT?
- Ensure proper distinction between technical direction and changes.
- Performance spec vs. design spec

F. Measurement Yardsticks For Environmental Restoration

- Cleanup to Specified Standards
- Quantity of wastes treated/stored/disposed
- Cleanup for Reuse
- Cost Management - contractor is key
- Cleanup to Greenfields versus Brownfields

- Segregation of wastes to optimize treatment costs versus disposal costs

- Performance Measures for different stages of remediation process (site assessment, characterization, remedial design, waste remediation from actual environment, waste treatment, waste storage, waste disposal,

- Emergency and rapid response capability

- Decontamination/Decommisssioning/Demolition of Treatment Facilities.

- Schedule Control (Critical Path and Change Process)

III. Quality Assurance Plan

Group Determined Elements for Quality Assurance Plan:

A. Measure performance against standards
B. Results
C. When to incorporate plan into process
D. Availability of plan. When to give to Contractors
E. Who administers the plan?
F. Relationship between plan and past performance
G. Sufficient detail for mutual understanding of expectations
H. Uniform QA plans for certain types of contracts. Standardization
I. Relationship between QA plan and Contractor quality control plan
J. Contents of the plan
K. Plan preparation
L. Why is this a topic for performance based contracting???

A. Measure performance against standards

- Define measurable standards
- How to validate?
- Use of ISO 9000/14000 and NQA1
  WHAT IS NQA1 AND PLEASE EXPLAIN ISO14000 FURTHER?
- Use of Estimating Standards/Guidebooks (Means, Racer, MCACES Gold).
  Contractor should be measured against proposed/negotiated costs.
- Development of parametric (paramedic ?)estimating standards.
- Relating standards to site cleanup objectives

B. Results

- Consequences of not complying with the plan; assesment of liability
- Repairing poor quality
  This is normally in contract clauses.
- Guide to determine whether there was acceptable performance.
- Basis for direction to contractor.
- Liquidated damages/penalties
- Used to identify potential problems.
- Use Quality Assurance Plan to assess success rather than prescribe methodology.

C. When to incorporate plan into process

- Before Contract Award, negotiation/competitive process should result in a contract quality assurance plan.
  THE QUALITY ASSURANCE PLAN CAN BE DEVELOPED CONCURRENTLY WITH THE PERFORMANCE BASED STATEMENT OF WORK.
- Organizations should have standard approach/plan/procedures for assuring quality assuance in every aspect of its operations (including contracting)
- Project specific quality assurance plans should be developed for specific projects at the time a work/task/delivery order is negotiated.
- Indefinite Delivery type contracts should have a contract management procedures (advance agreements/approach) to be used for developing individual project plans for the entire contract.

D. Availability of plan. When to give to Contractors.

- Upon release of the solicitation or upon negotiation of the performance measures.
  THE PLAN IS GENERALLY NOT SUBMITTED AS PART OF THE SOLICITATION BECAUSE OF THE INABILITY TO MODIFY IT.

E. Who administers the plan?

- Training on how to use and administer plan. Uniformity
- Modifying the plan
- Cost of the plan. Staffing; preparation; administration
- Frequency of reviews.
- Contractor's performance and the plan itself.
- Communication between the plan administrator(s) and the Contractor
- COTR/COR understanding of their duties. Do not tell Contractors how to perform the work.
- Training and recognition for COTRs/CORs needed. (i.e. possible career field; promotion; enhanced visibility)
- Is administration a full time job?
- Level of Required Documentation from COTR/COR.
- Approach for correcting deficiencies identified during performance (Contractor preparation of Corrective Action Plan, Govt. approval, and Govt. followup to ensure effective correction of the problem).

F. Relationship between plan and past performance

- Past performance evaluations can be based on the results of QA measurements. QA documents can be used to develop past performance report cards.
- Past performance part of source selection process.
- Past performance used to demonstrate qualifications.

G. Sufficient detail for mutual understanding of expectations

H. Uniform QA plans for certain types of contracts/Standardization

- Model QA plans for other types of services. Available through internet or diskette. Are any known for environmental remediation?
- While standard elements can be used for similar types of projects, individual project plans should always be tailored to meet the individual specialized requirements/variations in site circumstances.
- Need a better definition such as including the term, "surveillance"
- Can the QA Plan and the Performance Requirements Assurance Plan be one and the same document???
  WHAT IS THE "PERFORMANCE REQUIREMENTS ASSURANCE PLAN"?
- Why does government have the authority to change the QA Plan unilaterally???
  AS LONG AS THE CONTRACTOR'S REQUIREMENTS AND OBLIGATIONS ARE NOT CHANGED.

I. Relationship between QA plan and Contractor quality control plan

- QA/QC (Govt versus contractor) should be explained in training
- Relationship between QA plan and the contractor's QA/QC can be addressed at the kick off meeting. Contractors quality is measured by his QA/QC plan approved by the govt. The govt QA plan is based on the QA/QC.

J. Contents of the plan

- Methods of inspection
- Documentation requirements of the plan
- Schedules and checklists; milestones
- Percent of completion of phase points.
- Simplicity of the overall plan
- Chronological
- Simple and concise checklists; nonburdomesome
- Model checklist
- Use of statistically significant sampling methodologies.
- Has the task been completed? To what extent has the task been completed?

K. Plan preparation

- Who prepares the plan?
- Technical personnel in consultation with contracting personnel
- Review and approval

- Industry comment
- Government standard of quality assurance requirements/product acceptance criteria versus contractor proposed quality control.
- Is there an industry standard; is the plan reasonable?
- Can the plan be administered?

L. **Why is this a topic for performance based contracting???**

- This is how the Government plans to oversee contractor's performance

IV. Incentives

Group determined elements for Incentives

A. Cost-reimbursable

B. Fixed Price

C. Past Performance

D. Reduced Government Surveillance If The Contractor Is Performing Satisfactorally

E. Types Of Incentives

F. Purpose Of Incentives

A. Cost-Reimbursible

- Sharing savings on sliding scale. TARGET COSTS? CPIF? Need to ensure quality of cost estimate.

- Sharing overruns on sliding scale. TARGET COSTS? CPIF? Need to ensure quality of cost estimate.

- Labor force retention
  WHAT DOES THIS HAVE TO DO WITH INCENTIVES TO A CONTRACTOR?
  Good safety records; common ownershio b/n contractor an and Gov't

- Safety record - reduction in lost time accidents
  WHAT IS THE RELATION BETWEEN THIS AND INCENTIVES?

- Response time - e.g. replacing critical staff

- Award fee (not high priority/not desireable) Consider partial use of award fee to motivate contractor for items that can't be readily quantified.

- Time and schedule savings

- Getting on next short list or next job based on "past performance" and "best-value"
  Govt can not offer this as an incentive in advance?

- Eliminate concept of single fee ceiling. What does this mean???

- Use of Value Engineering. Incorporate value engineering as part of remediation culture

- Incentives for intermediate milestones on long term projects but also have incentives for completion of long term projects. Drive this job to completion; redeterminal pricing; able to renogotiate pricing

B. Fixed Price

- Redeterminable (can go back and negotiate: various future and past pricing). Question ability/advisability to renegotiate past pricing???

- Share material and supplies cost savings

- Limit the downward as well as upward economic price adjustment (EPA)

- Lost-time accidents
  SEE SAME COMMENT UNDER COST REIMBURSABLE

- Time and schedule savings

- Get on next short list or get next job. Serious Competition in Contracting Act issue here. Should only use as tiebreaker!!! Safety is most important;

- Balance disincentives w/incencites, e.g., deductions for FFP contracts.

- Labor Retention
  SEE SAME COMMENT UNDER COST REIMBURSABLE

- Use of incentives to reduce Government disposal costs through waste reduction/minimization.

C. Past Performance

- This should be a major selection criteria!!!!

D. Reduced Government Surveillance If The Contractor Is Performing Satisfactorally

- Should be at minimum (Statistically Significant Sampling) level to protect Government's interest.

- Tailor the surveillance to the performance.

E. Types Of Incentives

- AWARD FEE (Judgemental)

- FUTURE WORK- Expansion of existing work scope

- DEDUCTIONS

- Cost Reduction, Schedule Acceleration, Waste Minimization, Reduction of Government Disposal Costs.

- Incentive Fees

- Multiple Award Contracts
  Can you explain the incentive to the contractor in this??

- Sharing of Cost Savings.

- Use of objective criteria versus subjective criteria in PBSC.

F. Purpose Of Incentives

- Being rewarded for exceeding expectations
  Have clear objective metrics to measure performance. (i.e. milestones, cost savings)
- Being penalized for not meeting expectations
- Tie incentives to site cleanup objectives
- Rewards/acknowledgement for risk taking.
- Focus on completion rather than intermediate objectives and/or term form.

V. Evaluation Criteria

Group determined elements of evaluation criteria:

A. Technical Capability
B. Management Capability
C. Financial Capability
D. Cost
E. Past Performance
F. Risk Sharing/Conrtact Type
G. Community Ties & Economic Impact
H. Innovative Approach
I. Third Party Liability
J. Performance Guarantee
K. Quality Control Plan
L. Contractor's Understanding of Requirements
M. Location of Firm

A. Technical Capability

- Use of innovative technology
- Subcontractor selection -- best value
- Key Personnel, especially the project or program manager and the T.O. Mgrs. Need to ensure retention of key personnel for specified duration (No bait and switch)
- Adequate resources.
- Corporate experience.
- Good past performance on related projects.

- Proposed Technical approach must be specified in sufficient detail to demonstrate an adequate knowledge/understanding of the scope of work.
- Capability to obtain permits/licenses/certifications/registrations.
- Resources. Ability to complete the work in the required time frame.
- See Management and Technical subissues
- Vendor relations; ability to get priority materials and supplies on time on difficult conditions or changing conditions

B. Management Capability

- Managing sub contractors.
- Staffing Plans
- Track record in this role on previous projects
- Proven Project Management System including Project Cost/Schedule/Performance (CSS).
- Capability of the company's PM to control costs, and maintain schedules, etc.
- Adequate control and management systems. (conflict of interest, property, security, procurement, accounting system)
- Managing negotiated subcontracting plan requirements.
- Foreign Ownership and Control issues.

C. Financial Capability

- D& B status (financial rating, outstanding judgements or litigation)
- Bank and supplier references
- Bonding capacity (payment or performance or both)
- Subcontractor/Joint Venture financial strength. Joint venture traceable to parent company
- Cash flow strength (sufficient to pay subcontractors)
- Parent company guarantees.
- Insurance requirements (professional liability, pollution liability, third party).

D. Cost

- Best Value ??? NOT AN EVALUATION FACTOR; I.E., IT IS A SOURCE SELECTION METHOD not solely based on technical or lowest price
- Independent cost estimates
  Cost Realism and Cost Reasonableness
- How do you evaluate cost under task order contracts? WITH CHECK ESTIMATES.
- Pricing/Cost Analysis
- Compliance with Service Contract Act or Davis Bacon Act
- Compliance with rates specified in Contract. (labor, escalation, overheads)
- Cost with appropriate weighting as an evaluation factor.

E. Past Performance

- Safety record
- Customer satisfaction
- Time schedule and budget adherence
- No. of reworks
- Manage subs
- Adherence to Small bsns hiring/subcontracting goals
- Effectiveness of corrective actions
- Regulatory compliance on the job (Notices of Violation)
- Extent of Directly related experience
- Conflict of Interest issues.

F. Risk Sharing /Contract Type

- Flexibility on payment method
- BAA approach (Broad Agency Announcement) a solicitation method used by the Government for innovative/new technology work sources
  What is "BAA"? (The sound of a recently cloned sheep!)
  Is more flexability than BAA needed for certain contracts?
- Private financing (Privatization)
- Identify if the contractor has approved rates and an approved accounting system.
  Why is this under "Risk sharing/contract type"?
  This really is not a factor which should impact performance based contracting.

- Place cap on contractors indirect rates (i.e. overhead)
  See above question regarding, "why is this risk sharing?"
  This really is not a factor which should impact performance based contracting.

- Putting fee of total cost of job at risk based on the degree to which you know the SOW and quantities of the project (Does this mean 0 base fee?)

- Allow contractor to propose options in his proposal.

- Contractor liable for performance for a specified range of characterization values, beyond that range, an equitable adjustment will be negotiated

G. Community Ties And Economic Impact

- Too nebulous

- For example, Savannah River is a one-Contractor community. This one-Contractor has ties to the community and the impacts of bringing in a new contractor must be considered. (Get over it!!!)

H. Innovative Approach

- Will it work?

- Has it worked before?

- How does it relate to risk sharing

- Have they explained the possible performance risks associated with the proposed approach

- Potential benefits of the proposed approach

I. Third Party Liability

- Is this a toxic tort issue???? yes
- Gross negligence???Ordinary negligence and strict liability are the issues.
- Level of management involvement
- Contractor responsible for release of wastes to the environment.
- Operator/Generator/Permit Requirements
- Indemnification

J. Performance Guarantee

- Not an evaluation factor; its a responsibility factor. "Can you get it bonded?"
  The idea is to determine if a contractor is willing to guarantee to perform according to a standard that it promised in its proposal. Whether it can be bonded is a separate issue.
- Warranty of services or of technology -- industry standards???The warranty could be per industry standards or some other standard or criteria identified by the contractor. Professional Liability Insurance potentially invalidated if warranty of services required.

K. Quality Control Plan

L. Contractor's Understanding Of The Requirement

- Technical Approach - sufficient description.
- Have they done it or something like it before? Has the PM team done it too?? See Management and Technical subissues

M. Location Of Firm

- Could this be considered restrictive?
- State requirements in terms of response time (if applicable and necessary)

VI. Savings

Group determined elements of savings:

A. How To Measure Savings - Dollars, Time, Other Units Of Measure
B. How To Distribute The Savings - Government Share Vs Contractor Share
C. Points Of Time In Which Savings Are Measured
D. Productive Use Of Facility/Property
E. Resolution Of Disputes
F. Savings Realized From An Innovative Approach Proposed By The Contractor
G. Short Term Costs vs. Long Term Savings
H. Cost Avoidance
I. Competition

A. How To Measure Savings - Dollars, Time, Other Units Of Measure

- Intangibles
- Points of comparison
- ESTABLISH BASELINE (need to ensure quality of estimates and assumptions)
- Specify uniform criteria for establishing the benchmarks for calculating savings.
- Establish the baseline by developing a Government check estimate, use that to negotiate with the contractor's estimate -- this is a training issue for government technical personnel -- they need training on how to do it.
- Cost savings (hard dollar savings) versus cost avoidance.
- Prevention of future expenditure.
- Balancing risk versus cost efficiency

- Looking possible alternative approaches and select alternative with Lowest Reasonable cost.
- Cost savings (hard dollar savings) versus cost avoidance. Cost Savings using PBSC = acquisition costs; use of BAA w/ PBSC; LRC approach (Lowest Reasonable Cost); new efficiency; PBSC cost focus; a track record for cost savings based on a concentrated MIS; don't spend your money on mortgage, spend it on mission;
- Prevention of future expenditure
- Balancing risk versus cost efficiency
- Looking possible alternative approaches and select alternative with Lowest Reasonable cost.
- Program Management
- Other units of measure = environmental

B. How To Distribute The Savings - Government Share vs Contractor Share

- Statutory and regulatory impediments
- Contract language based upon negotiations
- For disputes, use ADR
- Share to Contractor employees.

C. Points Of Time In Which Savings Are Measured

- Pre-award, award, post award PREAWARD SAVINGS???
- Performance milestones
- Site completion/closure

- Contract completion or task order completion or achievement of specified milestones
- Specified Period of Time (i.e., 3 Years)

D. Productive Use Of Facility/Property

- Increase in Productivity Rate/Utilization Rate.

E. Resolution Of Disputes

- Agreement between Government and Contractor on savings realized.
- ADR and or specified communication process/ Partnering
- Disputes Clause
- Establish methodology for calculating savings.

F. Savings Realized From An Innovative Approach Proposed By The Contractor.

- Agreement between Government and Contractor on savings realized.

G. Short Term Costs vs. Long Term Savings

- Needs to be specified in contract

H. Cost Avoidance

- Need Periodic assessment of Budgets before payment for cost avoidances based on budgets.

- Periodic Assessment of Projects.
- Documentation

I. Competition

- Increase number of bidders
- Opportunities for small companies to compete
- Incentive to innovate
- Competition driven cost savings

VII. Impediments

Group Determined Elements for Impediments:

A. Statutory Fee Cap

B. Cultural- Reluctance To Change

C. Requirement For Structured Evaluation Criteria

D. Government Designating Contract Type

E. Threat Of Protest

F. Contracting Officer Personal Liability

G. Applying Traditional Construction Techniques To Environmental Work

H. Adverse Contractor/Government Relationship

I. Fear Of Adverse Publicity/Criticism

J. Lack Of Govenment Expertise In A Variety Of Commercial PBC Practices

K. Lack Of Universal Definition Of Performance Based Contracting

L. Intra-agency Culture; I.E., Location Of Contracting Activity In Overall Organizaion

M. Training For PBC, Technical And Contractual Personnel -- DOD vs. Civilian Agencies

N. Inability To Engage In Discussions Early On (Before Solicitation Hits The Street)
Don't Have Access To Acquisition Needs Or To Technical Staff Needing The Support

O. Unknown Risk Of Liability

P. Time -- Requirements Don't Come To Contracts With Sufficient Lead Time Or Industry Doesn't Have The Opportunity To Demonstrate That They Have Solutions In Advance Of Procurment

Q. Perceived vs. Real OCI

R. Social Legislation

S. Third Party Liabilities

T. Reasonable Clean Up Standards

U. Location of Firm

A. Statutory Fee Cap

- Are cost savings sharing applicable to statutory fee caps?

B. Cultural- Reluctance To Change

- Need to provide training
- Need to provide incentives to change (new reward structure)

C. Requirement For Structured Evaluation Criteria

- Need to make it easier to obtain waivers

D. Government Designating Contract Type

E. Threat Of Protest

- Subjectivity of selection process encourages the potential for protests in environmental remediation.
- Suggestion: Informal conflict resolution mechanism (ADR), or a prohibition against protests beyond the agency-level.

F. Contracting Officer Personal Liability

- Please provide more information. Why does PBSC give you more Contracting Officer liability than in other forms of contracting?

G. Applying Traditional Construction Techni ques To Environmental Work

- Just say "No"

H. Adverse Contractor/Government Relationship

- One of the basic principles of PBSC is strong Government and Contractor partnership, which lends itself to a more cooperative relationship.

I. Fear Of Adverse Publicity/Criticism

J. Lack Of Govenment Expertise In A Variety Of Commercial PBC Practices

- There needs to be a strong emphasis on education and training.
- There is currently a listing of 22 Government and Commercial sources, who offer training in PBSC that is available.
- Training needs to include senior level personnel (program, procurement, and legal).
- We need to examine if industry utilizes PBSC; and examine their practices and experiences.
- Need to establish Government wide inventory of effective performance based contracting incentives for environmental restoration.

K. Lack Of Universal Definition Of Performance Based Contracting

L. Intra-agency Culture; i.e. Location Of Contracting Agency In Overall Organization

- Questions of what or whether the CO has authority or what degree of authority he/she has.
- More work for Technical community to specify what their requirements are and CO ability to change the status quo.

M. Training For PBC, Technical And Contractual Personnel -- DOD Vs. Civilian Agencies

N. Inability To Engage In Discussions Early On (Before Solicitation Hits The Street) -- Don't Have Access To Acquisition Needs Or To Technical Staff Needing The Support

- What about draft RFPs as a way of getting industry involved?
- See Part 15 rewrite.

O. Unknown Risk Of Liability

- Need to specify contractual liability for issues such regulatory fines, penalties, third party liability, environmental releases, extenuating circumstances, change in laws
- Varying level of liability for Federal, State and Local requirements and different interpretations.
- Different types of contaminants with varying long term liability issues. (i.e., asbestos)
- Future liability Impacts of currently accepted remediation technologies (20 - 30 years out)

P. Time -- Requirements D on't Come To Contracts With Sufficient Lead Time Or Industry Doesn't Have The Opportunity To Demonstrate That They Have Solutions In Advance Of Procurment

Q. Perceived vs. Real OCI

- What is OCI? Organizational Conflict of Interest
  An organization is developing and implementing the service/task.

R. Social Legislation

- Small business set-aside
- Affirmative Action
- Buy American
- Local hire
- Environmental

S. Third Party Liabilities

T. Reasonable Clean Up Standards

- Conflict between Federal and State and local community preferences.
- Technical Approach - sufficient description.
- Have they done it or something like it before? Has the PM team done it too?? See Management and Technical subissues

U. Location Of Firm

- Could this be considered restrictive?
- State requirements in terms of response time (if applicable and necessary)

VIII. Liability

Group Determined Elements for Liability:

A. Contractor Assumption Of Liability/Risk Associated With Selectiing Cleanup Technique

B. Ability To Trade Off Risks And Incentives

C. Third Party Liability

D. Adapting Government Regulations To Commercial Practices

E. Government Owns The Site And The Liability On Site Unless The Contractor Is Negligent In Its Activities

F. Need The Superfund To Implement The Statute As Written By Congress

G. Statute Of Limitation For Retroactive Liability

H. As Perceived By Industry, The Inability Of Environmental Remediation Companies To Get Insurance.

A. Contractor Assumption Of Liability/Risk Associated With Selectiing Cleanup Technique

- Relative to the incentives offered by the government.
- Brownfields type program for government????
- Negotiate limits of liability in contract language like is done in the commercial sector (% of fee, project cost, finite dollar value, etc.)

B. Ability To Trade Off Risks And Incentives

C. Third Party Liability

D. Adapting Government Regulations To Commercial Practices

- What kind of regulations??? Contracting or something else???

E. Government Owns The Site And The Liability On Site Unless The Contractor Is Negligent In Its Activities

- Need to define responsibility for liabilities.

F. Need The Superfund To Implement The Statute As Written By Congress (Section 119???)

- What does this mean?

G. Statute Of Limitation For Retroactive Liability

H. As Perceived By Industry, The Inability Of Environmental Remediation Companies To Get Insurance.

- Major Concern for Small Business driven by their lack of resources.